SUPREME COURT OF THE UNITED STATES.

No. 225.

WILLIAM P. CLYDE & COMPANY, PLAINTIFFS IN ERROR,

vs.

WILLIAM L. GRAVER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

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1 Among the records and proceedings of the Supreme Court of Pennsylvania, at Philadelphia, in and for the eastern district, of January term, 1867, No. 302, it is thus contained:

2 In the District for the city and county of Philadelphia.

Earle 1,426 *McMurtrie, Feb.* 9, 1866.

WM. L. CRAVEN *vs.* WILLIAM P. CLYDE and W. H. HOWELL, trading as William P. Clyde & Co., and sometimes trading as the Philadelphia and New York Express Steamboat Co.	D. C., December term, 1865, No. 1,426.

Sum's case.

Ex. Feb. 3, 1866; ret. 1 Mon. Feb. 1866, "served"—
Mar. 28, 1866, narr. & rule to plead filed.
April 4, " plea filed.
Nov. 1, " jury called.
Nov. 2, " verdict for plaintiff, $948 $\frac{75}{100}$.
Nov. 3, " rule for new trial eo die reasons filed.
Dec. 12, rule refused.
Dec. 31, jury fee paid.
Eo die judgment.
Jan. 4, 1867, writ of error brought into office.

Certified from the record, this 5th day of Jan., 1867.
[SEAL.] W. H. BENCKERT,
Att'y, pro Proth'y.

3 *Summons.*

CITY AND COUNTY OF PHILADELPHIA, *ss:*

The Commonwealth of Pennsylvania to the sheriff of Philadelphia county, greeting:

We command you that you summon William T. Clyde and W. H. Howell, trading as William P. Clyde & Co., and sometimes trading as the Philadelphia and New York Express Steamboat Company, late of your county, so that they be and appear before the justices of the District Court at our same court, to be holden at Philadelphia, in and for the said county of Philadelphia, the first Monday of February inst., to answer William L. Grever, of a plea of trespass on the case, etc. And have you then and there this writ.

Witness the Hon. George Sharswood, L. L. D., president of our said court, at Philadelphia, the 3rd day of February, in the year of our Lord one thousand eight hundred and sixty-six.

[SEAL.] F. A. TREGO, *pr. Prothonotary.*

[Rev. stamp.]

4 Endorsed: No. 1,426, Dec. term, 1865. William L. Graver *vs.* William P. Clyde and W. H. Howell. Summons case. Earle.

Served by giving a true and attested copy of the within writ to each of the defendants and making known to them the contents thereof, February 3d, 1866. So answers

SAMUEL DANIELS, *Dep. Sh'ff.*
HENRY C. HOWELL, *Sh'ff.*

5 In the District Court for the city and county of Philadelphia, of December term, 1865, No. 1,426.

PHILADELPHIA COUNTY, *ss*:

William P. Clyde and Wm. H. Howell, trading as William P. Clyde & Co., sometimes trading as the Philadelphia and New York Express Steamboat Company, the defendants in this case, late of the county aforesaid, were summoned to answer William L. Grover, the plaintiff in this case, of a plea of trespass on the case, &c. Thereupon the said plaintiff, by George H. Earle, his attorney, complains: For that whereas the said defendants before and at the time of the making of their promise and undertaking hereinafter next mentioned were the owners of certain vessels then at Alexandria, in the State of Virginia, in the river Potomac, and bound from thence to Philadelphia, to wit, at the county aforesaid, and thereupon the said
6 plaintiff heretofore, to wit, on the second day of February, A. D. 1866, in the river Potomac aforesaid, to wit, at Alexandria, in the State of Virginia aforesaid, at the special instance and request of the said defendants, caused to be shipped and loaded on board of certain vessels whereof the said defendants were such owners or masters aforesaid, divers goods and merchandize, to wit, 7,000 boxes of army bread of great value, to wit, of the value of ten thousand dollars, to be taken care of and safely and securely carried and conveyed by the said defendants as such masters or owners as aforesaid, in and on board of their said vessels from Alexandria aforesaid to Philadelphia aforesaid, and there, to wit, at Philadelphia aforesaid, to be safely and securely delivered in good order and condition for the said plaintiff, and in consideration thereof, and of certain freight and reward to the said defendant in that behalf, they the said
7 defendants then and there undertook and faithfully promised the said plaintiff to take care of and safely and securely carry and convey and deliver the said goods and merchandize as aforesaid; and although the said defendants, so being such master and owners of the said ships or vessels as aforesaid, then and there had and received the said goods and merchandize to be carried, conveyed, and delivered as aforesaid, and although a reasonable time for carrying, conveying, and delivering of the said goods and merchandize as aforesaid hath long since elapsed, yet the said defendant so being such masters and owners of the said ships or vessels as aforesaid, not regarding their duty in that respect, nor their said promise and understanding, but contriving and intending to deceive, injure,
8 and defraud the said plaintiff in this behalf, did not nor would take care of and safely and securely carry or convey the said goods and merchandize so shipped in and on board of the said

ships or vessels as aforesaid, from Alexandria aforesaid to Philadelphia aforesaid, and there, to wit, at Philadelphia aforesaid, safely or securely deliver the same for the said plaintiff, but on the contrary thereof, they, the said defendants, so being such owners or masters of the said ships or vessels as aforesaid, so carelessly and negligently behaved and conducted themselves with respect to the said goods and merchandize, that by and through the mere carelessness, negligence, and improper conduct of the said defendants and their mariners and servants in that behalf, the said goods and merchandize, being of great value, to wit, of the value of ten thou-
9 sand dollars, became and were wholly lost to the said plaintiff, to wit, at the county aforesaid.

2. And also for that whereas the said defendants before and at the time of the making of their said promise and undertaking hereinafter next mentioned, were the masters and owners of certain ships or vessels then at Alexandria, in the State of Virginia, in the river Potomac, and bound from thence to Philadelphia, to wit, at the county aforesaid; and thereupon the said plaintiff heretofore, to wit, on the day and year aforesaid, at the special instance and request of the said defendants, caused to be shipped and loaded in and on board of the said ships or vessels whereof the said defendants then were such owners or masters as aforesaid, divers goods and merchandise, to wit, seven thousand boxes of army bread of great value, to
10 wit, of the value of ten thousand dollars, to be taken care of and safely and securely carried and conveyed by the said defendants as such master or owners as aforesaid, in and on board of the said ships or vessels from Alexandria aforesaid, to Philadelphia aforesaid, and there, to wit, at Philadelphia, to safely and securely delivered in good order and condition for the said plaintiff; and in consideration thereof, and of certain freight and reward to the said defendant in that behalf, they, the said defendants, then and there undertook and faithfully promised the said plaintiff to take care of, and safely and securely carry and convey and deliver the said goods and merchandise as aforesaid, and although the said defendants so being such masters or owners of the said ships or vessels as aforesaid,
11 then and there had and received the said goods and merchandise to be carried, conveyed, and delivered, as aforesaid, and although a reasonable time for the carrying, conveying, and delivering of the said goods and merchandise as aforesaid hath long since elapsed, and the said defendants have delivered a part of the said goods and merchandise, to wit, six thousand boxes thereof, for the said plaintiff at Philadelphia aforesaid, yet the said defendants so being such masters or owners of the said ships or vessels as aforesaid, not regarding their duty in that respect, nor their said promise and undertaking, but contriving and intending to deceive, injure and defraud the said plaintiff in this behalf, did not nor would take care of and safely and securely carry or convey the residue of the
12 said goods and merchandise, so shipped in and board of the said ships or vessels as aforesaid, from Alexandria aforesaid, to Philadelphia aforesaid, safely or securely deliver the same for the

said plaintiff, but on the contrary thereof, they, the said defendant, so being such masters or owners of the said ships or vessels as aforesaid, so carelessly and negligently behaved and conducted himself with respect to the said residue of the said goods and merchandise, that, by and through the mere carelessness, negligence, and improper conduct of the said defendant and his mariners and servants in that behalf, the said residue of the said goods and merchandise, being of great value, to wit, of the value of two thousand dollars, became and were wholly lost to the said plaintiffs, to wit, at the county aforesaid.

3. And also, for that whereas heretofore, to wit, on the day
13 and year aforesaid, at the county aforesaid, in consideration that the said plaintiff, at the special instance and request of the said defendant, had then and there caused to be delivered to the said defendant divers other goods and merchandise, to wit, 7,000 boxes of army bread, to be taken care of and safely and securely carried and conveyed in and on board of certain ships or vessels from Alexandria, in the State of Virginia aforesaid, to Philadelphia aforesaid, and there, to wit, at Philadelphia aforesaid, to be safely and securely delivered for the said plaintiff for certain freight and reward to the said defendants in that behalf, and the said defendants undertook and then and there faithfully promised the said plaintiff to take due and proper care of the said goods and merchandise, and to safely and securely carry, and convey, and to deliver
14 them for the said plaintiff, at Philadelphia aforesaid, to wit, at the county aforesaid, within twenty days from the recovering thereof, and although the said defendants then and there had and received the said goods and merchandise to be carried, conveyed, and delivered aforesaid, and although the 20 days as aforesaid hath long since elapsed, yet the said defendants, being such masters or owners of the said ships or vessels as aforesaid, not regarding their duty in that respect nor their said promise and undertaking, but contriving and intending to deceive, injure, and defraud the said plaintiff in this behalf, did not nor would take care and safely carry or convey the said goods and merchandise so shipped in and on board of the said ships or vessels as aforesaid from Alexandria aforesaid to Philadelphia afore-
15 said, and there, to wit, at Philadelphia aforesaid, safely and securely deliver the same for the said plaintiff within 20 days from the recovering thereof as aforesaid; but, on the contrary thereof, they, the said defendants, so being such masters and owners as aforesaid, so carelessly and negligently behaved and conducted themselves with respect to the said goods and merchandise, that by and through the mere carelessness and negligence and improper conduct of the said defendant and his mariners and servants in that behalf, the said goods and merchandise, being of great value, to wit, of the value of ten thousand dollars, became and were wholly lost to the said plaintiff, to wit, at the county aforesaid.

4. And also for that whereas heretofore, to wit, on the day
16 and year aforesaid, at the county aforesaid, the said plaintiff, at the special instance and request of the said defendant,

caused to be shipped and loaded in and on board of certain ships or vessels, whereof the said defendants then and there were such masters or owners as aforesaid, divers goods and merchandise, to wit, 7,000 boxes of army bread of great value, to wit, of the value of ten thousand dollars, to be taken care of and safely and securely carried and conveyed by the said defendants, as such masters or owners as aforesaid, in and on board of the said ships or vessels from Alexandria, in the State of Virginia aforesaid, to Philadelphia aforesaid, and there, to wit, at Philadelphia aforesaid, was
17 safely and securely delivered for the said plaintiff; and in consideration thereof, and of certain freight and reward to the said defendant in that behalf, they, the said defendants, then and there undertook and faithfully promised the said plaintiff to take care of and safely and securely carry and convey and deliver the said goods and merchandise within twenty days from the receiving thereof. And although the said defendants have received the said goods and merchandise as aforesaid, and although the said twenty days for the carrying, conveying, and delivering of the said goods and merchandise, as aforesaid, hath long since elapsed, and the said defendants have delivered a part of the said goods and merchandise, to wit, 6,000 boxes thereof, for the said plaintiff at Philadelphia aforesaid, yet the said defendants, so being such
18 masters or owners of the ships or vessels as aforesaid, not regarding their duty in that respect, nor their said promise and undertaking, but contriving and intending to deceive, injure, and defraud the said plaintiff in this behalf, did not, nor would take care of and safely and securely carry or convey the residue of the said goods and merchandise so shipped in and on board of the said ships or vessels, as aforesaid, from Alexandria aforesaid, and there, to wit, at Philadelphia aforesaid, safely or securely deliver the same for the said plaintiff within the 20 days as aforesaid; but, on the contrary, they, the said defendants, so being such masters and owners of the said ships or vessels as aforesaid, so carelessly and negligently behaved and conducted themselves with respect to the resi-
19 due of the said goods and merchandise that, by and through the mere carelessness, negligence, and improper conduct of the said defendant and his mariners and servants in that behalf, the said residue of the said goods and merchandise, being of great value, to wit, of the value of two thousand dollars, became and were wholly lost to the said plaintiffs, to wit, at the county aforesaid.

5. And also for that whereas heretofore, to wit, on the day and year aforesaid, at the county aforesaid, in consideration that the said plaintiff, at the special instance and request of the said defendant, had then and there caused to be delivered to the said defendant divers other goods and merchandise, to wit, 1,000 boxes of army bread of great value, to wit, of the value of two thousand dollars, to be taken care of, and safely and securely carried and conveyed by
20 the said defendant in and on board of certain ships or vessels whereof the said defendants were the owners or masters as aforesaid, from Alexandria aforesaid to Philadelphia, and there,

to wit, at Philadelphia aforesaid, to be safely and securely delivered for the said plaintiff for certain freight and reward, the said defendant in that behalf, they, the said defendants, undertook, and then and there faithfully promised the said plaintiff to take due and proper care of the said goods and merchandise while they had the care and custody thereof for the purpose aforesaid. Yet the said defendants, not regarding their duty in that behalf, nor their said last-mentioned promise and undertaking, but contriving and intending to injure and deceive the said plaintiff in this behalf, whilst the said
21 defendant had the care and custody of the said goods and merchandise for the purpose aforesaid, took so little and such bad care of the same that, by and through the mere carelessness and negligence of the said defendants in that behalf, the said goods and merchandise, being of the value aforesaid, to wit, on the day and year aforesaid, became and were wholly lost to the said plaintiff, to wit, at the county aforesaid.

And also for that whereas the defendants, on the second day of February, in the year of our Lord one thousand eight hundred and sixty-six, at the county aforesaid, were indebted to the plaintiff in fifty thousand dollars for goods then and there sold and delivered by the plaintiff to the defendants at their request.

22 And also in the further sum of fifty thousand dollars for goods then and there bargained and sold by the plaintiff to the defendants at their request.

And also in the further sum of fifty thousand dollars for work then and there done, and materials for the same provided by the plaintiff for the defendants at their request.

And also in the further sum of fifty thousand dollars for money then and there lent by the plaintiff to the defendants at their request.

And also in the further sum of fifty thousand dollars for money then and there paid by the plaintiff, for the use of the defendants, at their request.

And also in the further sum of fifty thousand dollars for money then and there had and received by the defendants for the use of the plaintiff.

23 And also in the further sum of fifty thousand dollars for money found to be due from the defendants to the plaintiff, on an account then and there stated between them; and also in the further sum of fifty thousand dollars for interest then and there due and payable, for the forbearance by the plaintiff at the defendant's request for moneys before then due and owing from the defendants to the plaintiff.

And the defendants, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, in consideration of the several last-mentioned promises, respectively then and there promised the plaintiff to pay him the said several last-mentioned moneys, respectively, on request; yet the defendants have disregarded their promises, and have not paid any of the said moneys, or any part thereof, to

24 the damage of the plaintiff fifty thousand dollars. And therefore he brings suit.

JOHN DOE,
RICHARD ROE,
Pledges, &c.
GEO. H. EARLE,
Att'y pro. Pl'ff, pr. M. H.

To Prth'y, D. C.

Endorsement: Graver *vs.* Clyde. District Court, No. 1,426. December term, 1865. Narr in assumpsit. Enter rule to plead in eight days, or judgment. Sec. reg. Plaintiff's attorney, Geo. H. Earle, R. J. W., pr. W. H. Filed M'ch 28, 1866.

25 In the District Court for the city and county of Philadelphia.
D. C., December term, 1865.

WM. L. CRAVEN
vs.
WILLIAM P. CLYDE *et al.* } No. 1,426.

And now, Nov. 1, 1866, a special jury being called, comes, to wit, who being duly empannelled sworn, or affirmed, according to law, do say:

Verdict for plaintiff, $948\frac{75}{100}$.

Reasons for new trial.

GRAVER
vs.
CLYDE.

1. Because the learned judge erred in including the testimony of M. E. Eldridge, the agent of the shipper, (the plaintiff,) as to his knowledge of the terms on which the owners of the steamer
26 carried when he received the bread for Graver, and had it first on board.

2. Because he rejected the evidence to prove the usual form of bills of lading issued by said steamer and the line of which it was one.

3. Because the learned judge erred in instructing the jury that if the usual routes of the steamer on the voyage in [in] question did not touch the ocean, or open sea, the act of Congress does not apply; and that Chesapeake bay, within the capes, is no part of the ocean.

4. Because the learned judge erred in refusing to charge the jury as requested in the first, second, and third points, as he was requested to charge by the defendant.

R. C. McMURTRIE.

Nov. 3, 1866.

27 Endorsement: Graver *vs.* Clyde. 1,426. D. 1865. Reasons for new trial. On motion of R. C. McMurtrie, for def'ts, rule to show cause why new trial should not be granted. R. C. McM. Filed Nov. 3, 1866.

said plaintiff, but on the contrary thereof, they, the said defendant, so being such masters or owners of the said ships or vessels as aforesaid, so carelessly and negligently behaved and conducted himself with respect to the said residue of the said goods and merchandise, that, by and through the mere carelessness, negligence, and improper conduct of the said defendant and his mariners and servants in that behalf, the said residue of the said goods and merchandise, being of great value, to wit, of the value of two thousand dollars, became and were wholly lost to the said plaintiffs, to wit, at the county aforesaid.

3. And also, for that whereas heretofore, to wit, on the day
13 and year aforesaid, at the county aforesaid, in consideration that the said plaintiff, at the special instance and request of the said defendant, had then and there caused to be delivered to the said defendant divers other goods and merchandise, to wit, 7,000 boxes of army bread, to be taken care of and safely and securely carried and conveyed in and on board of certain ships or vessels from Alexandria, in the State of Virginia aforesaid, to Philadelphia aforesaid, and there, to wit, at Philadelphia aforesaid, to be safely and securely delivered for the said plaintiff for certain freight and reward to the said defendants in that behalf, and the said defendants undertook and then and there faithfully promised the said plaintiff to take due and proper care of the said goods and merchandise, and to safely and securely carry, and convey, and to deliver
14 them for the said plaintiff, at Philadelphia aforesaid, to wit, at the county aforesaid, within twenty days from the recovering thereof, and although the said defendants then and there had and received the said goods and merchandise to be carried, conveyed, and delivered aforesaid, and although the 20 days as aforesaid hath long since elapsed, yet the said defendants, being such masters or owners of the said ships or vessels as aforesaid, not regarding their duty in that respect nor their said promise and undertaking, but contriving and intending to deceive, injure, and defraud the said plaintiff in this behalf, did not nor would take care and safely carry or convey the said goods and merchandise so shipped in and on board of the said ships or vessels as aforesaid from Alexandria aforesaid to Philadelphia afore-
15 said, and there, to wit, at Philadelphia aforesaid, safely and securely deliver the same for the said plaintiff within 20 days from the recovering thereof as aforesaid; but, on the contrary thereof, they, the said defendants, so being such masters and owners as aforesaid, so carelessly and negligently behaved and conducted themselves with respect to the said goods and merchandise, that by and through the mere carelessness and negligence and improper conduct of the said defendant and his mariners and servants in that behalf, the said goods and merchandise, being of great value, to wit, of the value of ten thousand dollars, became and were wholly lost to the said plaintiff, to wit, at the county aforesaid.

4. And also for that whereas heretofore, to wit, on the day
16 and year aforesaid, at the county aforesaid, the said plaintiff, at the special instance and request of the said defendant,

caused to be shipped and loaded in and on board of certain ships or vessels, whereof the said defendants then and there were such masters or owners as aforesaid, divers goods and merchandise, to wit, 7,000 boxes of army bread of great value, to wit, of the value of ten thousand dollars, to be taken care of and safely and securely carried and conveyed by the said defendants, as such masters or owners as aforesaid, in and on board of the said ships or vessels from Alexandria, in the State of Virginia aforesaid, to Philadelphia aforesaid, and there, to wit, at Philadelphia aforesaid, was
17 safely and securely delivered for the said plaintiff; and in consideration thereof, and of certain freight and reward to the said defendant in that behalf, they, the said defendants, then and there undertook and faithfully promised the said plaintiff to take care of and safely and securely carry and convey and deliver the said goods and merchandise within twenty days from the receiving thereof. And although the said defendants have received the said goods and merchandise as aforesaid, and although the said twenty days for the carrying, conveying, and delivering of the said goods and merchandise, as aforesaid, hath long since elapsed, and the said defendants have delivered a part of the said goods and merchandise, to wit, 6,000 boxes thereof, for the said plaintiff at Philadelphia aforesaid, yet the said defendants, so being such
18 masters or owners of the ships or vessels as aforesaid, not regarding their duty in that respect, nor their said promise and undertaking, but contriving and intending to deceive, injure, and defraud the said plaintiff in this behalf, did not, nor would take care of and safely and securely carry or convey the residue of the said goods and merchandise so shipped in and on board of the said ships or vessels, as aforesaid, from Alexandria aforesaid, and there, to wit, at Philadelphia aforesaid, safely or securely deliver the same for the said plaintiff within the 20 days as aforesaid; but, on the contrary, they, the said defendants, so being such masters and owners of the said ships or vessels as aforesaid, so carelessly and negligently behaved and conducted themselves with respect to the resi-
19 due of the said goods and merchandise that, by and through the mere carelessness, negligence, and improper conduct of the said defendant and his mariners and servants in that behalf, the said residue of the said goods and merchandise, being of great value, to wit, of the value of two thousand dollars, became and were wholly lost to the said plaintiffs, to wit, at the county aforesaid.

5. And also for that whereas heretofore, to wit, on the day and year aforesaid, at the county aforesaid, in consideration that the said plaintiff, at the special instance and request of the said defendant, had then and there caused to be delivered to the said defendant divers other goods and merchandise, to wit, 1,000 boxes of army bread of great value, to wit, of the value of two thousand dollars, to be taken care of, and safely and securely carried and conveyed by
20 the said defendant in and on board of certain ships or vessels whereof the said defendants were the owners or masters as aforesaid, from Alexandria aforesaid to Philadelphia, and there,

to wit, at Philadelphia aforesaid, to be safely and securely delivered for the said plaintiff for certain freight and reward, the said defendant in that behalf, they, the said defendants, undertook, and then and there faithfully promised the said plaintiff to take due and proper care of the said goods and merchandise while they had the care and custody thereof for the purpose aforesaid. Yet the said defendants, not regarding their duty in that behalf, nor their said last-mentioned promise and undertaking, but contriving and intending to injure and deceive the said plaintiff in this behalf, whilst the said
21 defendant had the care and custody of the said goods and merchandise for the purpose aforesaid, took so little and such bad care of the same that, by and through the mere carelessness and negligence of the said defendants in that behalf, the said goods and merchandise, being of the value aforesaid, to wit, on the day and year aforesaid, became and were wholly lost to the said plaintiff, to wit, at the county aforesaid.

And also for that whereas the defendants, on the second day of February, in the year of our Lord one thousand eight hundred and sixty-six, at the county aforesaid, were indebted to the plaintiff in fifty thousand dollars for goods then and there sold and delivered by the plaintiff to the defendants at their request.

22 And also in the further sum of fifty thousand dollars for goods then and there bargained and sold by the plaintiff to the defendants at their request.

And also in the further sum of fifty thousand dollars for work then and there done, and materials for the same provided by the plaintiff for the defendants at their request.

And also in the further sum of fifty thousand dollars for money then and there lent by the plaintiff to the defendants at their request.

And also in the further sum of fifty thousand dollars for money then and there paid by the plaintiff, for the use of the defendants, at their request.

And also in the further sum of fifty thousand dollars for money then and there had and received by the defendants for the use of the plaintiff.

23 And also in the further sum of fifty thousand dollars for money found to be due from the defendants to the plaintiff, on an account then and there stated between them; and also in the further sum of fifty thousand dollars for interest then and there due and payable, for the forbearance by the plaintiff at the defendant's request for moneys before then due and owing from the defendants to the plaintiff.

And the defendants, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, in consideration of the several last-mentioned promises, respectively then and there promised the plaintiff to pay him the said several last-mentioned moneys, respectively, on request; yet the defendants have disregarded their promises, and have not paid any of the said moneys, or any part thereof, to

24 the damage of the plaintiff fifty thousand dollars. And therefore he brings suit.

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RICHARD ROE,
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GEO. H. EARLE,
Att'y pro. Pl'ff, pr. M. H.

To Prth'y, D. C.

Endorsement: Graver *vs.* Clyde. District Court, No. 1,426. December term, 1865. Narr in assumpsit. Enter rule to plead in eight days, or judgment. Sec. reg. Plaintiff's attorney, Geo. H. Earle, R. J. W., pr. W. H. Filed M'ch 28, 1866.

25 In the District Court for the city and county of Philadelphia.
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WM. L. CRAVEN
vs.
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And now, Nov. 1, 1866, a special jury being called, comes, to wit, who being duly empannelled sworn, or affirmed, according to law, do say:
Verdict for plaintiff, $948\frac{75}{100}$.

Reasons for new trial.

GRAVER
vs.
CLYDE.

1. Because the learned judge erred in including the testimony of M. E. Eldridge, the agent of the shipper, (the plaintiff,) as to his knowledge of the terms on which the owners of the steamer
26 carried when he received the bread for Graver, and had it first on board.

2. Because he rejected the evidence to prove the usual form of bills of lading issued by said steamer and the line of which it was one.

3. Because the learned judge erred in instructing the jury that if the usual routes of the steamer on the voyage in [in] question did not touch the ocean, or open sea, the act of Congress does not apply; and that Chesapeake bay, within the capes, is no part of the ocean.

4. Because the learned judge erred in refusing to charge the jury as requested in the first, second, and third points, as he was requested to charge by the defendant.

R. C. McMURTRIE.

Nov. 3, 1866.

27 Endorsement: Graver *vs.* Clyde. 1,426. D. 1865. Reasons for new trial. On motion of R. C. McMurtrie, for def'ts, rule to show cause why new trial should not be granted. R. C. McM. Filed Nov. 3, 1866.

Be it remembered, that in the term of December, A. D. 1865, came William L. Graver into the District Court for the city county of Philadelphia, and impleaded Wm. P. Clyde and Wm. H. Howell, trading, &c., in a certain plea of trespass on the case, &c., in which the said plaintiff declared (prout narr) and the said defend-
28 ants pleaded, (prout pleas,) and thereupon issue was joined between them.

And afterwards, to wit, at a session of said court held at the city aforesaid, before the Honorable George Sharswood, president of the said court, on Friday, the second day of November, A. D. 1866, the aforesaid issue between the said parties came to be tried by a jury of the said county, for that purpose duly impannelled, (prout list of jurors,) at which day came as well the said plaintiff as the said defendant, by their respective attorneys, and the jurors of the jury aforesaid, impannelled to try the said issues, being also called, came, and were then and there in due manner chosen, and sworn, or affirmed, to try the said issue; and thereupon the pl'ff, to maintain the issue
29 on his part, called Charles Van Hern, who testified he was the agent of the plaintiff about Nov. 1, 1865. I went to Washington, to the Quartermaster's Department, and bought 7,000 boxes of bread. It was stored at Alexandria, Virginia. I then went to the agent of the steamship company, and after conversation as to time and price, made an agreement with Eldridge & Co. It was reduced to writing. This is the agreement. The paper was as follows:

[U. S. stamp.]

ALEXANDRIA, *Nov.* 11, '65.

Will take the seven thousand boxes of bread, usual size, at ten cents box freight, to be caryed at our convenience within twenty days to Philadelphia.

Express line. (Signed) M. ELDRIDGE & CO., *Agents*.

I came back and signed an agreement to give them the
30 whole lot. In a day or two I sent a draft to pay for the bread, and an order to deliver to Eldridge & Co. the bread I had bought. The bread commenced arriving pretty soon; some 2 or 3,000 boxes came within the time. The bread did not arrive as fast as we wanted it, or the agreement called for. I applied to the agent of def't here, and was told it would come by the next boat. By the first of January 6,000 boxes had arrived. When I called again the clerk of def't told me one of their steamers had been burned with bread on board, and I could learn at the office if it was ours. I then called at Clyde & Cos., deft's, 14 S. wharves, and asked whose bread was burned. They referred to the manifest, and said, W. L. Gravers, (the pl'ffs.) The manifest was then called for, and produced
31 and read to the jury as follows: (A copy is annexed.) The name of the boat was the Liberty. They said they were not liable. There were 50,000 lbs. in the 1,000 boxes, and on cross-examination the witness stated the bread was $625. It was stored in the government storehouse at Alexandria. It was ne-

cessary to present orders to get delivery. I sent two orders to Eldridge & Co. for the bread, one for 6,000 boxes, and one for 1,000 boxes. I never received any bill of lading or letters. Graver wrote, urging the sending of the bread, and received an answer.

The pl'ffs then called a number of witnesses who proved the value of such bread in Philadelphia at the time it should have arrived, but no question on that point is raised on this record.

The def'ts, to maintain the issue on their part, called U. E. Eldridge, who having been sworn said, I am a commis-
32 sion merchant doing business in Alexandria, Va., also agent of this line of steamers; about 11 Nov., '65, Van Horn called to aske at what rate we would take a parcel of bread to Philadelphia, 3,000 boxes; he asked me to make a memorandum, that he might know how much the bread would cost him, and I did so. After that he called and said he had got the bread, 1,000 for Grover and 6,000 for himself, and asked me to ship Grover's first. Then he said he was going back to Phila., and he did not know about getting the order.

When the bids are accepted, the department at Washington send orders to the storekeeper at Alexandria to deliver the articles to the purchasers. I told G. Van Horn I would go to Washington as a matter of accommodation to him and get his orders. I went there and asked for the orders and was told there was none for
33 these parties. I called again and got the orders for Van Horn's, but was told there was none for Graver. I asked again, as I had a steamer ready; I called at the office in Alexandria and got Van Horn's and shipped it, but was told there was none for Graver. Afterwards I rec'd a letter asking why we had not shipped it. I replied simply, because we could not get it. I then saw Col. Bell, the chief of the com. department, and asked if there was no bread for Graver, he told me when he got back he would overhaul the books. When I returned to Alexandria the order came for the bread; I reserved room in the steamer which was to leave Washington, and I applied for the bread and got it and put it on board. She finished loading late, between 6 and 7 p. m., and left; next day before time for making up our mails we heard she was burned. We had not time to make up our mails after she left.

I have no employment from deft's or owners of steamer to
34 do anything but receive the goods at the ship.

The def'ts then proposed to ask the witness: Did you know the terms on which the steamer carried when you received the bread for Grover, and put it on board?

(Which being objected to was overruled and the witness not allowed to answer the question, to which ruling the def'ts counsel excepted and the learned judge sealed a bill of exceptions.

The def't's counsel then proposed to ask the witness: I this the form of the bill of lading issued by this steamer and line? (a paper being produced and shown witness which is hereby annexed and made a part of this bill, being marked A.)

To which question the pl'ff's counsel objected, and the judge sustained the objection and refused to allow the question to be

35 answered, to which ruling the def'ts excepted, and the learned judge sealed a bill of exceptions.

The witness continued, this letter was written to the pl'ff, (copy annexed marked B;) it was read in evidence.

The def't then called J. W. Waples, who being duly sworn said: I am United States inspector of steamers; I inspected the Liberty; this is my certificate, (copy annexed marked C.) All things mentioned in that certificate were on board. She was what we call a freight steamer, that we would give route from New York to Washington; she was built in 1864, and was in good condition June 15, 1865. We are required to inspect annually. The route is down the North river and through the Delaware and Raritan canal to the Delaware river, down that river to the Chesapeak and Delaware canal and through that canal to Bark river, down that to the Chesapeake across the Chesapeake bay to the mouth of the Potomac, and up the Potomac to Washington. Delaware bay begins as I understand it at Bombay Hook. The river is about 5 miles wide at Penn's Grove, which is above Delaware City, the entrance to the canal.

The route we gave her was N. Y., to go thro. the canal.

Inspected with reference to fitness for that route.

She was what is known as a steamer.

36

The line is known as the canal line.

The certificate was then read in evidence; a copy is annexed marked D.

The def'ts then called M. Smith, who being sworn says:

I was master of the Liberty; she was burned up; we left Alexandria between 5 and 6 o'clock p.m., on the 4th of January 1866. She took fire a little below Matthais' point. It broke out amidship near the end of the freight house between decks; fire room is between decks; knew nothing of the cause; our voyage requires us to round Point Lookout, on doing so we are not at sea but as bad; we do no not go to sea on this route, as we do not go outside Cape Henry. The width 37 of the bay there is from 25 to 30 miles. You can't see from shore to shore. The witness then proved the protest, the insolvence, and the license, copies of which are annexed and marked respectively, E F G, and were read to the jury in evidence.

Being cross-examined, the witness stated the fire took place between decks; cannot tell whether inside or outside the freight house; there is no passage to walk on there; I cannot tell on which side of the bulkhead it broke out, I was in bed, in my room on deck; I came out when the alarm was given; it was blowing a gale of wind; we had two pumps, one in the engine room and one forward; we got the pumps going; there was 125 feet of hose; we had it when we were inspected; can't say when purchased or how old it was; it was new when the vessel built. It burst when we used it; we took off that section and put in another, and 38 it burst, the fire spread so fast. The pilot had charge of the vessel; it was his watch, and the mate and engineer were on duty. I ran her on shore to save our lives; I knew nothing of the fire till I was woke from my sleep; the vessel was 148 odd tons burden and 95 feet on keel, draws 8 and 8½ feet.

It was not more than 15 minuies from the first alarm that I heard till we were cut off from the engine room.

The def't's counsel then requested the judge to instruct the jury:

1. If Eldridge undertook to have the goods shipped by the steamer at the pl'ff's request, express or implied, he became the agent of the pl'ff for that purpose, and if he knew the terms on which the steamer undertook to carry, and did not dissent from the terms expressed in the customary bills of lading, the def't is not liable for the loss if it was by fire, and that is a loss or peril excepted by the usual bill of lading.

2. The evidence shows the loss was under circumstances which discharges the owner.

39 3. If the vessel was upon a voyage which [which] required her to navigate the lower part of Chesapeak bay, the owner is not liable for a loss by fire occurring on such voyage unless it was through his carelessness or by his design.

4. That the Liberty was not a canal boat, barge, or lighter within the meaning of the act of Congress.

And the learned judge refused to instruct the jury as requested in the first, second, and third points presented to him, but did instruct the jury as requested by the 4th point, that the vessel was not a canal boat, barge, or lighter within the meaning of the act of Congress; and he further instructed the jury that if the usual route of this boat did not touch the ocean or open sea the act of Congress does not apply, and that Chesapeak bay within the capes is no part
40 of the ocean.

And thereupon the counsel for the said defendants did then and there except to the aforesaid charge and opinion of the said court, and inasmuch as the said charge and opinion so excepted to do not appear upon the record, the said counsel for the said defendants did then and there tender this bill of exceptions to the opinion of the said court, and requested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made and provided. And thereupon the aforesaid judge, at the request of the said counsel for the defendants, did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this 13th day of A. D. 1866.

[SEAL.] GEO. SHARSWOOD.

Endorsement: Graver *vs.* Clyde, 1426. December, 1865. D. C. Bill of exceptions.

41 NEW EXPRESS LINE

Between Philadelphia and Alexandria, Georgetown and Washington, D. C., via canal.

[Here follows cut of steamer.]

Agent at Philadelphia, Wm. P. Clyde & Co., 14 N. wharves; agent Georgetown and Washington, John B. Davidson, 59 Water st., Georgetown; agent at Alexandria, Havers & Bowen, No. 1 King street.

Contents and conditions of packages being unknown no responsibility is assumed therefor; nor will any package be estimated to con-

tain articles of more value than $200, unless specially certified to the contrary when shipped; nor will the company be responsible for cooperage or mending.

Marks and numbers.

PHILADELPHIA, , 186 .

This company is not liable for the leakage of oils or liquors, breakage of glass or castings, for rust, or for loss in weight of packages of coffee, tea, rice, flour, &c.; nor for goods not included in this
42 receipt, and for which no receipt is given. The goods must be taken by the consignee immediately after notice of the landing of the same on the wharves, or this vessel will not be responsible for any loss or damage that may happen to them. No damage allowed without being notified thereof within twelve hours after delivery, and this receipt is signed and accepted with reference to the exceptions and conditions herein contained.

Received from , on board , marked and numbered as in the margin hereof, which are to be delivered at , (the dangers of fire while on board the vessel or on shore, accidents from machinery, boilers, steam, or any other accidents and dangers of the seas, rivers, inland canal, and steam navigation, of whatever nature or kind, excepted,) to , upon surrendering this receipt at our office at the above port, and
43 paying freight and charges therefor.

It is further agreed that said vessel shall not in any event be liable for any loss, damage, or detention caused by civil or military authority, insurrection, or riot.

Freight, . Charges, .

,

For the Company.

44 EASTERN DISTRICT OF PENNSYLVANIA, *sct:*

The Commonwealth of Pennsylvania to the justices of the District Court for the city and county of Philadelphia, greeting:

Because in the record and process, and in rendering the judgment in a certain plaint, which was in our said court, before the judges of the same court, by our writ between William P. Clyde and William H. Howell, trading as W. P. Clyde and Company, and sometimes Philadelphia and New York Express Steamboat Co., plaintiffs in error, and William L. Graver, defendant in error, as it is said manifest error hath intervened to the great damage of the said plaintiff in error, as by complaint of the same plaintiff in error we have received information: we, willing that if any error be therein it should be corrected, and that speedy justice be done to the parties in this part, do command you that if judgment, as it is said, be rendered in the said plea, then the record and process and all things touching the same, under your seals, distinctly and openly, you have before the justices of our Supreme Court of Pennsylvania, at a Supreme Court to be held at Philadelphia, in and for the eastern district of said Commonwealth,

on the first Monday of January next, and this writ; that the record and process aforesaid being inspected, we may further cause to be done what of right and according to our laws and customs ought.

Witness the Hon. Geo. W. Woodward, doctor of laws, chief justice of our said supreme court, at Philadelphia, the second day of January, in the year of our Lord one thousand eight hundred and sixty-seven, and of the Commonwealth the ninety-first.

JAMES ROSS SNOWDEN,
[SEAL.] *Prothonotary.*

To the honorable judges within named:

Pleas within mentioned and all things touching the same we certify and send, together with this writ.

[SEAL.] GEO. SHARSWOOD.
[SEAL.] J. C. CLARK HARE.

45 Endorsed: Supreme Court. No. 302, January term, 1867. William P. Clyde *et al.*, trading, &c., plaintiffs in error *vs.* William L. Grover, 1426, Dec., '65, defendant in error. Writ of error to the District Court for the city and county of Philadelphia, returnable the first Monday in January, 1867. Rule on the defendant in error to appear and plead on the return day of the writ. I certify that John Laughlin, superintendent, 1323 Jarina street, and H. F. Watson, cashier, 605 north 22d street, are bail in error in the above case, in the sum of twenty-two hundred dollars. J. R. Snowden, proth'y. Brought into office Jan. 4, 1867. Record returned January 8, 1867. R. C. McMurtrie.

46 *Assignment of errors.*

CLYDE, pl'ff in error,
vs.
GRAVER, def't in error. } S. C., J. '67.—302.

1st. The court erred in rejecting the question tendered by the defendant to the witness, as follows: "Did you know the terms on which the steamer carried when you received the bread for Graver and had it put on board?"

2nd. The court erred in refusing to allow the defendants to ask the witness, "Is this the form of the bill of lading issued by this steamer and line?"

3rd. The court erred in refusing to charge the jury, as requested by the defendants in their first point, viz:

"1st. If Eldredge undertook to have the goods shipped by the steamer at pl'ff's request, express or implied, he became the agent of the plaintiff for that purpose; and if he knew the terms on
47 which the steamer undertook to carry, and did not dissent from the terms expressed in the customary bills of lading, the def't is not liable for the loss, if it was by fire, and that is a loss or peril excepted by the usual bill of lading."

4th. And in not charging, as requested in the second point, viz:

"2. The evidence shows the loss was under the circumstances which discharges the owner."

5th. And in not charging, as requested in the third point, viz:

"3rd. If the vessel was upon a voyage which required her to navigate the lower part of Chesapeake bay, the owner is not liable for a loss by fire occurring on such voyage, unless it was through his carelessness or by his design."

R. C. McMURTRIE,
For Pl'ff in Er.

Endorsement: Clyde *vs.* Graver. 302. Jan. 67. Ass't of errors. Filed January 7, 1867.

48 THOMAS P. CLYDE & Co. *vs.* WM. L. GRAVER. } Error to Dis. Court, Phila.

Argued before court in banc, and the opinion of the court was delivered by Woodward, chief justice, in the words following, to wit:

Charles Van Horn having bought 7,000 boxes of army bread at Washington, in the fall of 1865, six thousand for Graver and one thousand for himself, went to Alexandria, where the bread was stored, and arranged with M. E. Eldredge, the accredited agents of the defendants at that place, for the transpoatation of the boxes by their express line to Philad'a. The agreement was reduced to writing, in these words:

[U. S. stamp.]

"ALEXANDRIA, *Nov.* 11, 1865.

"Will take the seven thousand boxes of bread, usual size, at ten cents box freight, to be carried at our convenience, within twenty days to Philadelphia.

"Express line.

"(Signed) M. ELDRIGE & CO., *Agents.*"

49 Orders had to be obtained from the proper department at Washington for the delivery of the boxes out of the storehouse at Alexandria, and as Van Horn wished to return immediately to Phila., he requested Eldrege to go to Washington and get the orders, which Eldrege agreed to do. Some of them were obtained with considerable difficulty; but Eldrege finally got them, and shipped several lots of the bread, which arrived safely. The last lot of 1,000 boxes were shipped on board the steamer "Liberty," which, on her way down the Potomac, took fire, and was totally consumed, with her whole cargo, including the bread.

The action was assumpsit against Clyde & Co., as common carriers for this lot of bread. No bill of lading was executed, but upon the trial the defendants offered to show that the form of bill
50 which they ordinarily gave excepted dangers by fire.

The court rejected the evidence, and we think rightly. The

excepting clause in a bill of lading which was not issued was certainly irrelevant. The contract under which the shipment was made contained no such exception, and it was scarcely worth while for the court and jury to inquire what exceptions would have been found in a bill of lading had one issued, or that the defendant's usual course of business was to except fire risks.

But inasmuch as Eldrege had undertaken, at the instance of Van Horn, to procure the orders for the several lots of bread, and to attend to the shipment of it, the court was asked to rule that he became the pl'ff's agent, and if he knew of the terms on which the steamer undertook to carry, and did not dissent from them,
51 the defendants were not liable, for it was customary to except losses by fire.

This was a very ingenious, but too artificial a mode of transferring the loss by fire from the defendants to the pl'ff. Doubtless, Eldrege knew the usual conditions upon which the defendants received goods for transportation, for he was their proper agent, but there was no evidence to affect the pl'ff with notice of the exceptions of risks from fire, for Eldrege was not his agent. He acted as the agent of the defendants in procuring this freight, and in defining, in writing, the terms of the transportation; and that he acted within his powers is shown by their acquiescence in the transportation of the several lots before the last. The contract to carry was made in Nov., '65, and from that time to the 4th of the ensuing January, during which the bread was arriving in Philadelphia, was long enough for the
52 def'ts to learn on what terms the shipments were made, and to disaffirm them if they transcended the powers of their agent. Van Horn was pl'ff's agent, but he had notice of no such condition as is now attempted to be imposed upon the pl'ff. The case resembles in these features that of Bean *vs.* Green, 3d Fairfield's, R. 422, where the owners of a line of stages were sued for the loss of a trunk that had been delivered to their driver by a postmaster with whom the pl'ff had left the trunk, but the fare for which had not been paid, nor was it entered on the waybill. The proprietors had given notice and brought it home to the postmaster that they "would not be accountable for any baggage unless the fare was paid, and the same was entered on the waybill." And the attempt there, was, as here, to affect the pl'ff with notice through the so-called agent. But the court said the postmaster could not be
53 regarded as the agent of the owner, but might, with at least equal propriety, be deemed the agent of the defendants, and on this ground overruled the defence.

The propriety of regarding Eldrege exclusively as the agent of the defendants in this case is much more apparent than the ruling in that case; for, as the local agent of the defendants, it was according to his employment to solicit freights, to accommodate customers, and to facilitate shipments. And then all that he did in the premises was known to his employers and tacitly approved by them until liability attached. The attempt to affect the pl'ff with the excepting clause of the bill of lading, not adopted in this instance, was properly overruled.

The only other ground of defence was upon the act of Con-
54 gress of 3d March, 1851, (Brightly's Digest, 834,) which exempts owners of any ship or vessel from liability for loss of goods by means of any fire happening to or on board of any such ship or vessel, unless such fire is caused by the design or neglect of such owner or owners. But the 56th sec. of the act provides that it shall not apply to the owners of any "canal boat, barge or lighter, or to any vessel of any description whatsoever, used in rivers or inland navigation."

As the fire in this instance was not caused by design or neglect, the only question upon this statute is, whether the steamer was used in rivers or inland navigation. And on this point there can be no doubt. Her route was by the Potomac river, Chesapeake bay, Delaware and Raritan canal and Delaware river to Philadelphia, and Smith her master swore that "we do not go to sea on this route, as we do not go
55 outside Cape Henry." Then the passage through Chesapeake Bay is inland navigation, as that by the rivers Potomac and Delaware confessedly is. This case falls then within the 56th sec. of the act of Congress, and the common law liability of the carriers remains as if the act had not been passed.

The judgment is affirmed.

56 In the Supreme Court of Pennsylvania, June term, 1867.

WILLIAM P. CLYDE and WILLIAM H. Howell, trading as W. P. Clyde & Company, and sometimes Philadelphia and New York Express Steamboat Co., plaintiffs in error, *vs.* WILLIAM L. GRAVER, defendant in error.	No. 302.

Writ of error to the District Court for the city and county of Philadelphia, ret'ble the first Monday of January, 1867. Exit Jan'y 2d, 1867. Eo die affidavit and recognizance taken. (No. 1, 4, 2, 6, Dec. T., 1865.)

Jan. 7, 1867. Record returned and assignments of error filed.
" 15, " Non pros.
" 16, " Non pros taken off.
Feb. 6, " Argued.
March 21, " Judgment affirmed, opinion by Woodward, C. J.
April 6, " Writ of error from the Supreme Court of the United States brought into office and filed.

I certify the above and foregoing to be a true and accurate copy of the whole record and proceedings in the above-stated case, so
57 full and entire as they remain on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the said Supreme Court this 27th day of April, A. D. 1867.

[SEAL.] JAMES ROSS SNOWDEN,
Prothonotary.

[5-ct. rev. stamp, cancelled.]

58 In the Sup. C't. of the U. S.

WILLIAM CLYDE and WILLIAM H. GRAVER, trading &c., pl'ffs in error,
vs.
WILLIAM L. GRAVER, def't in error.

R. C. McMurtrie, being sworn, says, he is the attorney of the pl'ffs in error. On the 21 of March last the Supreme Court of Pennsylvania affirmed the judgment of the District Court of the city and county of Philadelphia, upon a writ of error to that court, that in and by said judgment the right, privilege and exemption claimed by the plff's in error under an act of Congress of the United States was decided against by the said Supreme Court, and final judgment entered against the said pltff's in error, and they therefore pray that a writ of error to the said judgment be allowed.

R. C. McMURTRIE.

Sworn and subscribed this 28th of May, 1867.

W. GRIER HIBLER,
U. S. Commissioner.

59 Let the writ of error issue agreeably to the petition within.

R. L. GRIER, *Asso. Just. S. C. U. S.*

60 UNITED STATES, *Eastern District of Pennsylvania, sct* :—

The President of the United States to the judges of the Supreme Court of the State of Pennsylvania, in and for the eastern district of Pennsylvania, greeting:

Because, that in the record and process and also in the rendering of judgment in a suit before you, between William P. Clyde and William H. Howell, trading as William P. Clyde & Co., plaintiffs in error, and William L. Graver, defendant, in a plea of a manifest error has entervened to the great damage of the said William P. Clyde & Co., plaintiffs in error, as in their complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid with all things concerning them and this writ; so that you have the same before the judges of the Supreme Court of the United States, to be holden at Washington, in the District of Columbia, on the first Monday of December next; that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honourable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Philadelphia, this sixth day of April, A. D. one thousand eight hundred and sixty-seven, and in ninety-first year of the independence of the said United States.

W. GRIER HIBLER,
Pro. Clerk C. C. U. S.

61 To the Honorable the Judges of the Supreme Court of the United States of America:

The record and process within mentioned, with all things touching the same, before the judges within named, at the day and place within mentioned, in a certain record to this writ annexed, we do certify and send, as within we are commanded.

GEO. W. WOODWARD,
Chief Justice Supreme Court of Pennsylvania.

Attest: JAMES ROSS SNOWDEN,
Prothonitary Supreme Court of Penn'a.

Endorsed: Writ of error brought into office of Supreme Court of Penna., E. D., and filed April 6, 1867.

62 In the Supreme Court of the United States.

Assignment of error.

THOMAS P. CLYDE & CO., pl'ff's in error,
vs.
WILLIAM L. GRAVER, def'd't in error.

The plaintiff in error assigns the following errors in the judgment of the Supreme Court of Pennsylvania affirming the judgment of the District Court for the city and county of Philadelphia, in the above-entitled cause.

First. The court erred in overruling the fourth assignment of errors by the plaintiff in error in the record in the said Supreme Court of Pennsylvania, to the instruction of the learned judge who tried the cause, wherein he refused to instruct the jury as requested by the defendant, (now the pl'ff in error,) in the second prayer for such instructions, that the evidence shows the loss was under circumstances which discharges the owner, where as he should have given that instruction, and the Supreme Court should have reversed the judgment because of his refusal to do so; in as much as by the act of Congress approved March 3rd, 1851, entitled an "act to limit the liability of ship owners and for other purposes," being chapter 43, acts of 1851, the owners of vessels such as that on which the goods were loaded for the loss of which the action was brought are discharged or exempted from personal liability for the loss of goods shipped and carried on such vessels, where the loss was caused by fire without
63 the negligence or the design of the said owners, the court having instructed the jury that the said vessel was not a canal boat, barge or lighter within the meaning of the said act of Congress, and was therefore a vessel of such a description as to be within the said act.

Second. The said court erred in overruling the fifth assignment of

errors to the instruction of the learned judge who tried the cause, wherein he refused to instruct the jury as requested by the plaintiff in error, in the third prayer for such instructions, viz: that if the vessel was upon a voyage which required her to navigate the lower part of Chesapeake bay, the owner is not liable for a loss by fire occurring on such voyage unless it was through his carelessness or by his design; whereas he should have instructed the jury that under the said act of Congress the owner was not liable, but was exempted and discharged from liability for the loss of goods on board of a vessel upon such a voyage, the said vessel not being a canal boat, barge or lighter, which it was ruled by the said judge she was not.

GEO. W. BIDDLE,
For pl'ff in error.